IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.7689 of 2002

Robart ... Petitioner

Vs.

1. The Director of Collegiate Education,
E.V.R. Sampath Buildings,
Chennai - 600 006.

2. The Secretary,
St. Jude's College,
Thoothoor 629 176,
Kanyakumari District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.R.Yashod Vardhan
For respondents : Mr.C.Thirumaran
Government Advocate for R1
Mr.A.R.Nixon for R2

O R D E R

The Writ Petition has been filed praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the second respondent in proceedings No.SJC/2831/C/2000, dated 31.5.2001, and the first respondent's proceedings RC.No.27671/F4/2001, dated 12.2.2002, and to set aside the order of the second respondent, dated 31.5.2001, as affirmed by the first respondent by order, dated 12.2.2002, and consequently to direct the respondents to reinstate the petitioner as Lecturer in Malayalam in the second respondent College with arrears of salary and all consequential benefits.

The brief facts of the case, as stated by the petitioner, are as follows:

2. The petitioner had been appointed as a Lecturer in Malayalam in St. Jude's College, Thoothoor, in Kanyakumari District, with effect from 28.6.1995. While so, the petitioner had sought for a day's leave, on

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31.7.2000, and he had submitted his leave letter to the Head of the Department. Thereafter, he had applied for six months of no pay leave, from 31.7.2000. However, the Principal had refused to grant leave. Instead, the petitioner was placed under suspension, from 31.7.2000. By the proceedings, dated 19.9.2000, he was issued a show cause notice by the second respondent to explain as to why the disciplinary proceedings should not be initiated against him for the alleged charges. The first charge against the petitioner was that he had remained on unauthorised absence from 31.7.2000 and the second charge was that the petitioner had eloped with a former girl student and that he had allegedly married her. The petitioner had submitted his explanation to the charge memo and it was pointed out that he had sought for leave by means of a letter and subsequently, by way of a telegram. The petitioner's request had been refused by the second respondent. The petitioner had also denied the charge that he had eloped with the former girl student and that he had not committed the unethical act, which would harm the reputation of the Institution. With regard to the third charge, the petitioner had stated that, on 22.8.2000, when he was taking rest in his house, one Harry Pereira along with some antisocial elements had forcibly taken the petitioner and had coerced him into affixing his signature on a document in the Office of the concerned Sub-Registrar. The petitioner had later learnt that the document was a deed of agreement to marry one Reeja. Therefore, the petitioner had not committed any wrong and the proceedings against him was to be dropped.

3. It had been further stated that despite the explanation submitted by the petitioner, the second respondent had appointed K.Mohanan Nair as the Enquiry Officer to enquire into the alleged charges. The Management examined the Correspondent, the petitioner's father-in-law and the Secretary of the College, as witnesses.

4. It is alleged by the petitioner that the enquiry proceedings were conducted in a biased manner and there was gross violation of the principles of natural justice. There is nothing in the report to show that the objections raised by the petitioner had been considered. By notice, dated 3.5.2001, the petitioner was informed by the second respondent that the Enquiry Officer had submitted his report and that the Management had decided to impose a punishment on the petitioner. The petitioner had been directed to submit his explanation and by his reply, dated 9.5.2001, the petitioner had pointed out that the charges were baseless and that they had not been established during the enquiry. However, the second respondent by his proceedings No.SJC/2831/C/2000, had informed the petitioner that the Management Committee, of which the Secretary and the Correspondent of the second respondent College were members, had considered the enquiry report and had resolved to terminate the services of the petitioner, with retrospective effect, from 31.7.2000. The petitioner had submitted an appeal to the first respondent, on 11.6.2001. Since the first respondent had not disposed of the appeal, the petitioner had come before this Court by way of a writ petition, in W.P.No.17958 of 2001 and this Court, by an order, dated 28.9.2001, had directed the first

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respondent to dispose of the appeal, within a specified period. The first respondent by an order, dated 12.2.2002, in his proceedings R.C.No.27671/F4/2001, had affirmed the order of the second respondent, dated 31.5.2001. In such circumstances, the present writ petition came to be filed.

5. In the counter-affidavit filed on behalf of the second respondent, it has been stated that the petitioner was removed from service by termination, since he had committed errors and mistakes. The order of termination was passed for a good reason and after following the due procedures. The allegations made by the petitioner, in his affidavit, are false. It is false to state that the petitioner initially sought for a day's leave, on 31.7.2000 and that he had submitted his leave letter to the Head of Department. It is also false to state that the Principal directed the Head of Department not to accept the leave letter. In fact, the petitioner had unauthorisedly absented himself from the second respondent College without information to the Management. It is also incorrect to state that the petitioner had applied for six months of no pay leave from 31.7.2000. The Principal of the second respondent College had not received any Telegram from the petitioner as stated by him. Since the activities of the petitioner were against the interest of the College and its students, the petitioner was suspended from service, from 31.7.2000. The petitioner was given a show cause notice for the three charges mentioned in the charge memo. Though the petitioner had given his explanation denying the charges, he had committed unethical acts harming the reputation of the institution. The petitioner's claim that he had signed a document regarding his marriage in the Sub-Registrar's Office, under threat, is not true. The petitioner had voluntarily and willingly married Reeja and the petitioner is still living with their children, till date. The petitioner had not taken any legal steps to cancel the marriage with Reeja. Though the petitioner had claimed that he had executed a deed cancelling the marriage, he had failed to produce the copy of the cancellation deed.

6. It has been further stated that a concluded marriage cannot be cancelled by an unilateral deed of cancellation. It can be done only through the Court of law with competent jurisdiction.

7. The petitioner had married Reeja, even though earlier he had married Anitha Mary and had two children from her. The second marriage is prohibited under the marriage laws applicable to Christians. The second marriage concluded by the petitioner with Reeja is invalid in the eye of law and amounts to a criminal offence.

8. An enquiry had been conducted based on the charges framed against the petitioner. After examining the oral and documentary evidence, the enquiry officer had come to the right conclusion holding that the charges were proved. Since the petitioner in his explanation, dated 9.5.2001, had stated that he did not receive any enquiry report, the second respondent had issued the notice with the copy of the enquiry report granting time

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for the petitioner's reply, even though a show cause notice had been sent, on 3.5.2001 itself. The petitioner had not sent any reply to the notice, dated 16.5.2001, which was sent to him along with the enquiry report. There is no bias as alleged by the petitioner. The Management had come to the right conclusion in imposing the punishment on the petitioner for the serious misconduct committed by him. All the necessary procedures had been followed, in accordance with the principles of natural justice, during the enquiry conducted against the petitioner. Therefore, the punishment imposed upon the petitioner is just and reasonable.

9. Heard the learned counsel appearing on behalf of the petitioner as well as for the respondents.

10. The learned counsel appearing on behalf of the petitioner had submitted that the orders passed against the petitioner, terminating his service from the post of Lecturer in the second respondent College, were bad in law, as they were passed contrary to the principles of natural justice. There was clear bias in the process of decision making by the College Committee, which included the Correspondent and the Secretary of the second respondent College. Both, the Secretary of the College Management, who was witness No.1 and the Correspondent of the College Management, who was witness No.3, were acting as the prosecutors, witnesses, as well as the Judges in their own cause. Having formulated the charges and having been examined as witnesses on behalf of the College Management, it was highly improper on their part to sit in the Committee, in which the decision had been taken to dismiss the petitioner from service. None of the charges had been proved and the main charge of having entered into the second marriage had not been proved. The Enquiry Officer in his report, dated 23.4.2001, had stated that all the three charges levelled against the petitioner were proved.

11. The learned counsel appearing on behalf of the petitioner had submitted that even if the document, dated 23.8.2000, pertaining to the registration of marriage is taken to be true, it was cancelled, on 24.10.2000. In fact, the document, dated 23.8.2000, in which the petitioner was forced to sign, was only an agreement of marriage and it cannot be in any way taken to be a conclusion of marriage, which could be said to be valid in the eye of law.

12. The learned counsel appearing on behalf of the petitioner had relied on the following cases in support of his contentions.

13.1) In RATTAN LAL SHARMA Vs. MANAGING COMMITTEE DR.HARI RAM (CO-EDUCATION) HIGHER SECONDARY SCHOOL AND OTHERS (AIR 1993 S.C. 2155), the Supreme Court has held that "in the facts of the case, there was not only a reasonable apprehension in the mind of the appellant about the bias of one of the members of the enquiry committee, namely, the said Shri Maru Ram but such apprehension became real when the said Shri Maru Ram appeared as a witness against the appellant to prove the said charge and thereafter, proceeded with the enquiry proceeding as a member of the

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enquiry committee to uphold the correctness of his deposition, as a Judge. The learned Single Judge considering the aforesaid facts came to the finding that the participation of Shri Maru Ram as a member of the enquiry committee has vitiated the enquiry proceeding because of flagrant violation of the principles of natural justice. Unfortunately, the Division Bench set aside such judgment of the learned Single Judge and dismissed the Writ Petition improperly, to say the least, on a technical ground that plea of bias of Shri Maru Ram and his acting as a Judge in his own case by being a member of the enquiry committee was not specifically taken before the Deputy Commissioner and also before the appellate authority, namely, the Commissioner by the appellant and as such the said plea should not be allowed to be raised in writ proceeding, more so, when the case of prejudice on account of bias could be waived by the person suffering such prejudice. Generally, a point not raised before the Tribunal or administrative authorities may not be allowed to be raised for the first time in the writ proceeding, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course or must as indicated by this Court in A.M.Allison V. State of Assam, (AIR 1957 Supreme Court 227), particularly when the plea sought to be raised for the first time in a writ proceeding requires investigation of facts. But if the plea though not specifically raised before the subordinate Tribunals or the administrative and quasi-judicial bodies is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the Court, it is only desirable that a litigant should not be shut out from raising such plea which goes to the root of the lis involved. The aforesaid view has been taken by this Court in a number of decisions and a reference may be made to the decisions in A.S.Arunachalam Pillai V M/.s.Southern Roadways Ltd., AIR 1960 Supreme Court 1191; The Cantonment Board, Ambala V Pyarelal, (1965) 3 SCR 341; (AIR 1966 Supreme Court 108). In our view, the learned Single Judge has very rightly held that the Deputy Commissioner was under an obligation to consider the correctness and propriety of the decisions of the Managing Committee based on the report of the enquiry committee which since made available to him, showed on the fact of it that Shri maru Ram was included and retained in the enquiry committee despite objection of the appellant and the said Shri Maru Ram became a witness against the appellant to prove one of the charges. It is really unfortunate that the Division Bench set aside the decision of the learned Single Bench by taking recourse to technicalities that the plea of bias on account of inclusion of Shri Maru Ram in the enquiry committee and his giving evidence on behalf of the department had not been specifically taken by the appellant before the Deputy Commissioner and the Commissioner. The Division Bench has also proceeded on the footing that as even apart from Charge No.12, the Deputy Commissioner has also considered the other charges on consideration of which along with Charge No.12, the proposed order of dismissal was made, no prejudice has been caused to the appellant. Such view, to say the

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least, cannot be accepted in the facts and circumstances of the case. The learned Single Judge, in our view, has rightly held that the bias of Shri Maru Ram, one of the members of the enquiry committee had percolated throughout the enquiry proceeding thereby vitiating the principles of natural justice and the findings made by the enquiry committee was the product of a biased and prejudiced mind. The illegality committed in conducting the departmental proceedings has left an indelible stamp of infirmity on the decision of the Managing Committee since affirmed by the Deputy Commissioner and the Commissioner. The observation of S.R.Das, C.J. In Mohd,Nooh's case (AIR 1958 Supreme Court 86)"

13.2) In M.JAMALUTHEEN Vs. DIRECTOR OF SCHOOL EDUCATION ((2006) 3 M.L.J. 747), this Court has held that the President of a Committee in control of the School, and the Correspondent of the school are members of the Enquiry Committee. The Correspondent, issued the charges, is instrumental in framing charges, is the person who initiated the Departmental proceedings, is the person who received the explanation from the delinquent, is not expected to be in the Enquiry Committee. The President, a powerful person also should not be in the Enquiry Committee. The very object of natural justice is defeated. The delinquent after the enquiry was over, asked for a fresh enquiry, on the next day. Without accepting or rejecting his request the order of punishment was passed. This would also vitiate the enquiry.

14. Per contra, the learned counsel appearing on behalf of the respondents had relied on the following decisions in support of his contentions.

14.1. In OM PRAKASH MANN Vs. DIRECTOR OF EDUCATION (BASIC) AND OTHERS, ((2006) 7 SCC 558), the Supreme Court has held that the doctrine of principles of natural justice are not embodied rules. They cannot be applied in a straitjacket formula. To sustain the complaint of violation of the principles of natural justice one must establish that he has been prejudiced by non-observance of the principles of natural justice.

14.2. In HIGH COURT OF JUDICATURE AT BOMBAY Vs. SHASHIKANT S.PATIL, (AIR 2000 S.C.22), the Supreme Court has held that interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article.226 of the Constitution, if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. However, it cannot be overlooked that the departmental authority is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before

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the High Court in a writ petition filed under Article 226 of the Constitution.

15. On an analysis of the rival contentions and on a perusal of the records available, this Court is of the considered view that the respondents have not sufficiently shown that the impugned proceedings could be sustained in the eye of law.

16. The Management of the second respondent College has not been in a position to substantiate the charges levelled against the petitioner in the manner known to law. Mere allegations of a serious nature cannot be said to validate the order passed by the second respondent College terminating the service of the petitioner. The alleged second marriage of the petitioner with Reeja had not been proved. Merely registering of a document, agreeing to marry someone, cannot be taken to be a concluded marriage, which could be said to be legal in the eye of law, especially, when the petitioner had stated that he was forced to sign such a document. Even the said document, dated 23.8.2000, which was a marriage agreement, was said to have been cancelled, on 24.10.2000. Further, it is seen that the petitioner had given a complaint to the Sub-Inspector of Police, on 24.8.2000, stating that some anti-social elements had trespassed into his house and abducted the petitioner and forced him to sign the document and to register the same by coercion, undue influence and threat. Similarly, a complaint had been given to the Sub-Registrar, Kanjiramkulam, on the same date. In such circumstances, the second respondent Management had not sufficiently proved that the petitioner had entered into the second marriage with Reeja, while his wife Anitha Mary was still alive.

17. It has also been seen that the Management Committee enquiring into the charges against the petitioner included the Secretary of the College, who was the College Management witness No.1 and the Correspondent of the College Management, who was the College Management witness No.3. During the enquiry, the father-in-law of the first wife, namely, Anitha Mary, has been examined as Management witness No.2.

18. It has also been stated by the petitioner that the enquiry proceedings were conducted in a biased manner and that there was gross violation of the principles of natural justice. Even though several questions were put to the Management's witnesses by the counsel for the petitioner, they were disallowed by the Enquiry Officer, arbitrarily. The documents were allowed to be marked, despite serious objections about the documents' genuineness. Having been witnesses for the Management, during the enquiry, the Secretary and the Correspondent of the second respondent College were members of the Management Committee, which had considered the enquiry report and resolved to terminate the petitioner from service from 31.7.2000. The petitioner had, therefore, contended that the decision of the Management Committee of the second respondent College was biased.

19. Further, it is also seen that the claims made by the petitioner that the enquiry was not conducted in a fair and proper manner have not

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been dispelled by the second respondent Management. Fairness in following the procedure shall not only be done, but shall also be seemed to be done. The violation of principles of natural justice would vitiate the enquiry, if it is found to be prejudicial to the petitioner. In the present case, the petitioner has brought forth sufficient and cogent reasons to convince this Court to hold that the charges against the petitioner have not been satisfactorily proved following the principles of natural justice. The decisions cited by the petitioner in favour of his claims have also been considered by this Court, while coming to the present conclusion. In such view of the matter, the impugned proceedings of the respondents are set-aside and the respondents are directed to reinstate the petitioner in service, with continuity of service and with 50% of the arrears of salary, calculated from the date of his dismissal from service, within a period of six weeks from the date of receipt of a copy of this order. The writ petition stands allowed accordingly. No costs.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To
1. The Director of Collegiate
   Education,
   E.V.R. Sampath Buildings,
   Chennai - 600 006.

2. The Secretary,
   St. Jude's College,
   Thoothoor 629 176,
   Kanyakumari District.

+ IOne cc to Mr. A. R. Nixon Advocate S?R 5542
+ One cc to Mr. R. Yashod Vardhan Advocate SR 5191
BS (co)
sg 9/2/07

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